

The text of the basis for nonstatutory obviousness-type double patenting and section 103(a) of Title 35, U.S. Code not included in this action can be found in the non-Final rejection mailed November 17, 2006.

1. Claims 20-31 and 36-38 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Surjan et al. Patent Nos. 6,291,555 (claims 1-19), 6,403,678 (claims 1, 2 and 8-10) or 6,420,458 (claims 1-12 and 23-26, Surjan et al. '555, '678 or '458, respectively) in view of Coleman et al. Patent No. 6,166,849 and Morgan et al. Patent No. 5,681,128.
2. Claims 32-35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Surjan et al. '555, '678 or '458 as set forth hereinabove and further in view of Gienau et al. Patent No. 6,645,340 and Hartman et al. Patent No. 5,962,602.

The rejections are maintained for the reasons of record set forth in the previous Office actions until terminal disclaimers are filed.

3. Claims 20-31 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surjan et al. '555, '678 and '458 as well as Surjan et al. Patent Nos. 6,402,434 and 6,416,256 in view of Coleman et al. and Morgan et al.
4. Claims 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Surjan et al. patents as applied to the claims hereinabove, and further in view of Gienau et al. and Hartman et al.

The rejections are maintained for the reasons of record set forth in the previous Office actions. The arguments filed March 22, 2010 have been considered but are unpersuasive.

5. The statement in the Remarks section of the response filed March 22, 2010 on page 3, lines 14-16 does not establish the common ownership of the claimed subject matter by Illinois Too Works Inc. at the time the invention was made as required in MPEP § 706.02(l)II. Evidence Required to Establish Common Ownership.

6. Surjan et al. Patent No. 6,291,555 qualifies as prior art under 35 U.S.C. 102(a)/103(a) since the patent date of September 18, 2001 antedates the effective filing date of the instant application of December 28, 2001.

Claims 20-31 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coleman et al., Morgan et al., Gienau et al., Hartman et al., European Patent No. 488,949; the Toussaint et al. article, Grieves et al. Patent No. 4,623,702 and Japanese Patent No. 2000-273354.

The rejection is maintained for the reasons of record set forth in the previous Office actions. The arguments filed March 22, 2010 have been considered but are unpersuasive.

7. As explained in the non-Final rejection mailed September 22, 2009 on page 4 in paragraph 6, the 37 CFR 1.132 declaration filed August 11, 2009 compares an adhesive allegedly representative of the claims designated as "New G5" with a known adhesive named "Existing G5." There are no revelations as to the types and amounts of components within these adhesives to establish whether the former is actually reflective of the claims and the latter is representative of each of the eight prior art formulations.

8. The claimed curing agent is broadly defined as a plurality of aliphatic amines and at least one tertiary amine, each encompassing a wide variety of structurally and functionally diverse species such as the aliphatic amines set forth on page 8, the third full paragraph of the specification, as well as the tertiary amines which embrace any compound with a tertiary amine group that is not even described therein. Due to the extreme breadth of the claimed generically denoted aliphatic amines and tertiary amines, the burden of proof rests with applicant to establish the criticality of such a combination. Furthermore, the testing of a single epoxy:amine weight ratio does not confirm the criticality of the extreme claimed parameters of from about 0.5:1 to 10:1 ranging two orders of magnitude.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Monday to Friday, 9:30 to 6:00

/Robert Sellers/
Primary Examiner
Division 1796

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4/8/2010